

**2003 DRAFTING REQUEST****Bill**Received: **01/29/2004**Received By: **mshovers**Wanted: **As time permits**

Identical to LRB:

For: **Bonnie Ladwig (608) 266-9171**By/Representing: **Janine**This file may be shown to any legislator: **NO**Drafter: **mshovers**

May Contact:

Addl. Drafters: **jkreye**Subject: **Tax (indiv) - deduct/subtract  
Tax - corp. inc. and fran.**Extra Copies: **PJK**Submit via email: **YES**Requester's email: **Rep.Ladwig@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Tax deduction for health savings accounts for individuals, based on federal Medicare bill

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**Instructions:**

See Attached. Same as SB 409, LRB -3993/2

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 01/29/2004	kgilfoy 01/29/2004		_____			State Tax
/1			jfrantze 01/30/2004	_____	sbasford 01/30/2004	<del>lnorthro</del> 02/04/2004 lnorthro 02/04/2004	

02/04/2004 10:03:11 AM

Page 2

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

"/1" 2/4/04

<END>

Janine

Rush-Hearing  
Feb 18th

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/?	mshovers 01/29/2004	kgilfoy 01/29/2004					State Tax
/1			jfrantze 01/30/2004		sbasford 01/30/2004		

*Jacket  
per  
Janine  
at  
office*

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**<END>**

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See Attached. Same as SB 409, LRB -3993/2

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1/	mshovers	1-1/29 km9	1/30	Self 1/30			

11 MES 1/29/04

FE Sent For:

&lt;END&gt;

Marc:

This is not entered - it  
is just the HSA portion of  
LRB-3588/2. I marked up

3588 to take out my stuff.

They would like the bill  
next week. Thanks!

Pam

**Kahler, Pam**

---

**From:** Kahler, Pam  
**Sent:** Wednesday, January 28, 2004 2:04 PM  
**To:** Hale, Janine  
**Subject:** RE: split of LRB 3588/2

Hi, Janine:

I'm glad you sent the e-mail because I was under the impression that you wanted just one bill that included both of those pieces. Now I know that you actually want two bills (in addition to LRB-3588/2), each with one of those pieces. Yes, I'm sure they can be out to you by next week.

Pam

-----Original Message-----

**From:** Hale, Janine  
**Sent:** Wednesday, January 28, 2004 1:59 PM  
**To:** Kahler, Pam  
**Subject:** split of LRB 3588/2

Hi Pam,

This is in follow-up to our conversation late afternoon yesterday. Bonnie would like to stick with the current HSA language in LRB 3588/2.

So to reiterate, we want to draft the self-funded employer group piece and the HSA piece as two separate bills. Do you think they could be ready by next week?

Thanks,  
Janine

*Janine L. Hale*  
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(608)266-9171  
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State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2003/2  
P01/MES/JK:wj/jf

2003 BILL

INSTRUCTIONS

regenerate ↓

- 1 AN ACT *to create* subchapter XVI of chapter 71 [precedes 71.98], 146.92, 601.415  
2 (8) and 635.25 of the statutes; **relating to:** ~~self-funded employer groups for~~  
3 ~~providing health care coverage, a basic benefits health care plan,~~ adopting  
4 federal law as it relates to health savings accounts for state income and  
5 franchise tax purposes, ~~and granting rule-making authority.~~

*Analysis by the Legislative Reference Bureau*

***Self-funded employer groups***

This bill authorizes the formation of three employer groups each for the purpose of establishing and administering a health care benefit arrangement for providing, on a self-funded basis, health care benefits to the employees of the employers that participate in each employer group. Two or more employers that are members of the same chamber of commerce may form an employer group and other employers that are members of that same chamber of commerce may elect to participate in the employer group that is formed. An employer that participates must offer to cover all of its employees who have a normal work week of at least 30 hours, and their dependents, and, generally, may not discontinue participation before the employer group terminates.

Each employer group will determine all matters necessary for the operation of its health care benefit arrangement, which may operate for no longer than five years. An employer group may not provide more than \$50,000 in benefits to a covered

**BILL**

person per year on a self-funded basis and must obtain stop-loss coverage. Each health care benefit arrangement must provide the same benefits for all employers participating in the employer group, but the contributions paid by participating employers for self-funding purposes and for purchasing stop-loss coverage do not have to be the same. Both the employer groups and the health care benefit arrangements are exempt from all requirements under the insurance statutes. The employer groups may not be considered insurers, and the health care benefit arrangements may not be considered insurance contracts, for any purpose under the statutes.

Each employer group must annually submit to the Commissioner of Insurance (commissioner) and to the appropriate standing committees of the legislature a report that contains information about the employers participating, the covered employees and dependents, the benefits offered, and the claims paid. The Legislative Audit Bureau is required to conduct a performance audit of each employer group and its health care benefit arrangement and to prepare a report on each for distribution to the appropriate standing committees of the legislature.

***Basic benefits plan***

This bill requires the commissioner to design by rule a health benefit plan (plan) for the employees of small employers (generally, employers with 2 to 50 employees) and the dependents of the employees. The plan must provide basic benefits; may exclude or modify any health insurance mandates with which health insurers or health benefit plans are required to comply under current law; and must be designed so that the average premium for coverage under the plan is at least 10 percent lower than the average premium paid by small employers for coverage under other group health benefit plans.

From May 1, 2005, to April 30, 2010, every insurer that offers group health benefit plans to small employers must offer the plan designed by the commissioner. The insurers offering the plan must submit annual reports to the commissioner on the number of employers and employees and dependents with coverage under the plan, and the commissioner must compile the information in an annual report to the appropriate standing committees of the legislature. The Legislative Audit Bureau is required to conduct a performance audit of the plan, analyzing the participation rate and the premiums charged.

***Health savings accounts***

This bill adopts, for state income and franchise tax purposes, section 1201 of Public Law 108-173 as it relates to claiming a deduction for an amount that a person pays into a health savings account.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**BILL**

1       **SECTION 1.** Subchapter XVI of chapter 71 [precedes 71.98] of the statutes is  
2 created to read:

**CHAPTER 71****SUBCHAPTER XVI****INTERNAL REVENUE CODE UPDATE**

6       **71.98 Internal Revenue Code update.** The following federal laws, to the  
7 extent that they apply to the Internal Revenue Code, apply to this chapter:

8                               *For taxable years beginning after December 31, 2003,*  
(1) HEALTH SAVINGS ACCOUNTS. ~~Section 1201 of P.L. 108-173, to the extent that~~  
9 ~~it relates~~ *relating* to health savings accounts.

10       **SECTION 2.** 146.92 of the statutes is created to read:

11       **146.92 Self-funded employer groups.** (1) DEFINITIONS. In this section:

12       (a) "Eligible employee" means an employee who works on a permanent basis  
13 and has a normal work week of 30 or more hours. The term includes a sole proprietor,  
14 a business owner, including the owner of a farm business, a partner of a partnership,  
15 and a member of a limited liability company if the sole proprietor, business owner,  
16 partner, or member is included as an employee under the health care benefit  
17 arrangement under this section, but the term does not include an employee who  
18 works on a temporary or substitute basis.

19       (b) "Eligible employers" means employers that are members of the same  
20 chamber of commerce.

21       (2) FORMATION, ELIGIBILITY, AND QUALIFICATION. (a) No later than January 1,  
22 2006, 2 or more eligible employers may form an employer group to establish and  
23 administer an employee health care benefit arrangement for the joint provision of  
24 health care benefits on a self-funded basis to their eligible employees, the eligible

**BILL****SECTION 2**

1 employees of other eligible employers that elect to participate in the employer group,  
2 and the dependents of those eligible employees.

3 (b) 1. The eligible employers forming the employer group shall specify a date  
4 by which other eligible employers must elect to participate in the employer group or  
5 be foreclosed from participating. All eligible employers that elect to participate by  
6 the date specified and that meet any requirements established under sub. (5) (d)  
7 shall be allowed to participate in the employer group.

8 2. Notwithstanding subd. 1., an employer that is a new business starting up  
9 after the date specified in subd. 1., that becomes a member of the same chamber of  
10 commerce after that date, that elects to participate by a later date that the employer  
11 group establishes for the new business to make the election, and that meets any  
12 requirements established under sub. (5) (d) shall be allowed to participate in the  
13 employer group.

14 (c) No more than 3 employer groups may be formed under par. (a), and no more  
15 than one employer group may be composed of employers that are members of any one  
16 chamber of commerce. The first 3 employer groups that provide evidence to the  
17 commissioner of insurance that they have formed and are in compliance with the  
18 requirements under this section shall qualify to participate in the project under this  
19 section. The commissioner of insurance shall provide notice in the Wisconsin  
20 administrative register when 3 employer groups have qualified under this  
21 paragraph. The notice shall list the groups and the dates on which each provided the  
22 necessary evidence of compliance.

23 (d) 1. Except as provided in subd. 2., an employer group may operate and  
24 provide benefits under its employee health care benefit arrangement established  
25 under this section for no longer than 5 years.

**BILL**

1           2. After the employer group has ceased operating its employee health care  
2 benefit arrangement, it shall continue to be responsible for paying eligible claims  
3 that were incurred during the time in which the employee health care benefit  
4 arrangement was operating.

5           (3) EMPLOYER REQUIREMENTS. (a) An employer that participates in an employer  
6 group under this section shall be required to offer health care benefits under the  
7 employee health care benefit arrangement to all of the employer's eligible employees  
8 and all of the eligible employees' dependents, as defined by the employer group under  
9 sub. (5) (b), and may not offer any other health care benefits to its eligible employees  
10 or their dependents.

11           (b) An employer that elects to participate in an employer group under this  
12 section shall be required to participate until the employer group terminates. To  
13 ensure participation, an employer group may require all employers that elect to  
14 participate to pay, at the commencement of participation, an amount that will be  
15 forfeited to the employer group if the employer discontinues its participation before  
16 the employer group terminates. In addition, any employer that discontinues  
17 participation before the employer group terminates shall be responsible for the  
18 employer's proportionate share of the cost of any eligible claims payable by the  
19 employer group that were incurred before the employer discontinued participation.

20           (4) COVERAGE. (a) Each employer group shall pay no more than \$50,000 in  
21 benefits on a self-funded basis in a calendar year for each person covered under its  
22 employee health care benefit arrangement. Each employer group shall obtain excess  
23 or stop-loss coverage through an insurer authorized to do business in this state in  
24 an amount that is sufficient to pay eligible claims that exceed the amount that the  
25 employer group will pay on a self-funded basis per person in a calendar year.

**BILL****SECTION 2**

1 (b) An employer group shall provide the same, uniform health care benefits for  
2 each employer that participates in that employer group.

3 (5) ADMINISTRATION. (a) Each employer group shall determine all matters  
4 necessary for the administration and operation of its employee health care benefit  
5 arrangement.

6 (b) Each employer group shall define who is a dependent for purposes of  
7 coverage under its employee health care benefit arrangement.

8 (c) Each employer group shall determine the amounts that eligible employers  
9 participating in the employer group must contribute for self-funding the employee  
10 health care benefit arrangement, for paying administrative expenses, and for  
11 purchasing excess or stop-loss coverage. The contribution amounts may vary from  
12 employer to employer based on criteria developed by the employer group.

13 (d) An employer group may specify minimum participation requirements that  
14 an eligible employer must satisfy for participation in the employer group.

15 (e) Notwithstanding sub. (3) (b), an employer group may specify circumstances  
16 under which a participating employer may discontinue participation in the employer  
17 group before the termination of the employer group without forfeiting all or a portion  
18 of the amount paid by the employer under sub. (3) (b).

19 (6) REPORTS. (a) Annually, each employer group shall prepare and submit to  
20 the commissioner of insurance and to the chief clerk of each house of the legislature  
21 for distribution to the appropriate standing committees under s. 13.172 (3) a report,  
22 which shall be due 2 months after the anniversary of the date on which the employer  
23 group began operation, that includes all of the following information for the  
24 reporting period:

- 25 1. The number of employers participating in the employer group.

**BILL**

- 1           2. The number of employees that each participating employer has.
- 2           3. The number of employees and dependents covered under the employer
- 3           group's health care benefit arrangement and the age and sex of each covered
- 4           employee and dependent.
- 5           4. A brief description of the benefits that are provided under the health care
- 6           benefit arrangement.
- 7           5. The total contributions paid by participating employers, the contribution
- 8           amount used for self-funding the health care benefit arrangement, the contribution
- 9           amount used for paying administrative expenses, and the contribution amount used
- 10          for purchasing excess or stop-loss coverage.
- 11          6. The criteria upon which the employer contribution amounts were based.
- 12          7. The amount that has been paid out in benefits under the employee health
- 13          care benefit arrangement on a self-funded basis and under the excess or stop-loss
- 14          coverage.
- 15          8. The type of health care coverage, if any, provided by each participating
- 16          employer during the 2-year period before the employer's participation in the
- 17          employer group and the cost of that health care coverage, including both employer
- 18          and employee costs.
- 19          9. The number of employers that discontinued participation in the previous
- 20          year, if any, the reason for each discontinued participation, and the penalty imposed
- 21          on each.
- 22          (b) The legislative audit bureau shall conduct a performance evaluation audit
- 23          of each employer group formed under this section and of its employee health care
- 24          benefit arrangement. The bureau shall be allowed access to all records of each
- 25          employer group that may be relevant for this purpose but may not use or maintain

**BILL****SECTION 2**

1 any personally identifying information contained in the records. Within 6 months  
2 after an employer group submits its 2nd annual report under par. (a), the bureau  
3 shall submit copies of its audit report for that employer group to the chief clerk of  
4 each house of the legislature for distribution to the appropriate standing committees  
5 under s. 13.172 (3).

6 (7) EXEMPTION FROM INSURANCE REGULATION. Notwithstanding 29 USC 1144 (b)  
7 (6) (A), chs. 600 to 645 and any rules promulgated under chs. 600 to 645 do not apply  
8 to an employer group, or to an employee health care benefit arrangement, under this  
9 section. An employer group shall not be considered an insurer, and an employee  
10 health care benefit arrangement shall not be considered an insurance contract, for  
11 any purpose under the statutes.

12 **SECTION 3.** 601.415 (8) of the statutes is created to read:

13 601.415 (8) EMPLOYER GROUP QUALIFICATION. Notwithstanding s. 146.92 (7), the  
14 commissioner shall perform the duties required under s. 146.92 (2) (c) related to the  
15 qualification of employer groups for the project under s. 146.92.

16 **SECTION 4.** 635.25 of the statutes is created to read:

17 **635.25 Basic benefits plan.** (1) The commissioner shall by rule design a  
18 group health benefit plan that small employer insurers shall offer to small employers  
19 for providing health care coverage for their employees and the employees'  
20 dependents. The plan shall provide basic benefits and may exclude or modify any  
21 of the health insurance mandates, as defined in s. 601.423 (1), except to the extent  
22 that any health insurance mandate is required under federal law. The plan shall be  
23 designed so that the average premium for coverage under the plan is at least 10  
24 percent lower than the average premium paid by small employers for coverage under  
25 other group health benefit plans.

**BILL**

1           (2) Beginning on May 1, 2005, and ending on April 30, 2010, every small  
2 employer insurer shall be required to offer the plan, except that coverage may not  
3 be terminated before the end of the agreed term for any policy purchased on or before  
4 April 30, 2010, regardless of whether the coverage extends beyond April 30, 2010.

5           (3) (a) Annually, beginning on July 1, 2006, and ending on July 1, 2010, each  
6 small employer insurer shall submit to the commissioner a report that includes the  
7 following information for the 12-month period ending on the preceding April 30:

8           1. The number of small employers that have purchased coverage under the  
9 plan.

10           2. The number of employees that each small employer under subd. 1. has.

11           3. The number of employees and dependents that are covered under the plan.

12           4. The number of small employers that have purchased other health care  
13 coverage offered by the small employer insurer.

14           5. Any other information required by the commissioner by rule.

15           (b) Annually, beginning on September 1, 2006, and ending on September 1,  
16 2010, the commissioner shall submit to the chief clerk of each house of the legislature  
17 for distribution to the appropriate standing committees under s. 13.172 (3) a report  
18 that compiles the information submitted to the commissioner under par. (a). The  
19 commissioner may by rule require small employer insurers to include in the reports  
20 information in addition to that required under par. (a) 1. to 4. that the commissioner  
21 determines would be useful for assessing the effectiveness of the plan.

22           (4) The legislative audit bureau shall conduct a performance evaluation audit  
23 of the basic benefits group health benefit plan under this section. The audit shall  
24 analyze the participation rates in the plan and the premiums charged for coverage  
25 under the plan for a comparison with premiums paid by small employers under other

**BILL**

1 group health benefit plans. The bureau shall be allowed access to all records of each  
2 small employer insurer that may be relevant for this purpose but may not use or  
3 maintain any personally identifying information contained in the records. By  
4 January 1, 2008, the bureau shall submit copies of its audit report to the chief clerk  
5 of each house of the legislature for distribution to the appropriate standing  
6 committees under s. 13.172 (3).

**SECTION 5. Nonstatutory provisions.**

8 (1) RULES FOR BASIC BENEFITS PLAN. The commissioner of insurance shall submit  
9 in proposed form the rules required under section 635.25 (1) of the statutes, as  
10 created by this act, to the legislative council staff under section 227.15 (1) of the  
11 statutes no later than October 1, 2004.

**SECTION 6. Initial applicability.**

12 (1) The treatment of subchapter XVI of chapter 71 of the statutes first applies  
13 to taxable years beginning on January 1 of the year in which this subsection takes  
14 effect, except that if this subsection takes effect after July 31 the treatment of  
15 subchapter XVI of chapter 71 of the statutes first applies to taxable years beginning  
16 on January 1 of the year following the year in which this subsection takes effect.  
17

18 (END)

-4165/11  
↑  
Rmr

# 2003 SENATE BILL 409

WANTED:  
MON 2/2

January 27, 2004 - Introduced by Senators DARLING, WELCH, STEPP, ROESSLER, ZIEN, REYNOLDS, LAZICH, BROWN, SCHULTZ, A. LASEE and HARS DORF, cosponsored by Representatives WIECKERT, LADWIG, JENSEN, HINES, VAN ROY, KREIBICH, ZIEGELBAUER, PETTIS, AINSWORTH, HAHN, MCCORMICK, MUSSER, STONE, ALBERS, NASS, J. WOOD, TOWNSEND, GROTHMAN, RHOADES, PETROWSKI, M. LEHMAN, F. LASEE, GUNDERSON, HUNDERTMARK, VRAKAS, BIES, TOWNS, NISCHKE and WEBER. Referred to Joint Survey Committee on Tax Exemptions.

repen

- 1 AN ACT *to create* subchapter XVI of chapter 71 [precedes 71.98] of the statutes;
- 2 relating to: adopting federal law as it relates to health savings accounts for
- 3 state income and franchise tax purposes.

## *Analysis by the Legislative Reference Bureau*

This bill adopts, for state income and franchise tax purposes, section 1201 of Public Law 108-173 as it relates to claiming a deduction for an amount that a person pays into a health savings account.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

- 4 SECTION 1. Subchapter XVI of chapter 71 [precedes 71.98] of the statutes is
- 5 created to read:

**SENATE BILL 409**

**CHAPTER 71**

**SUBCHAPTER XVI**

**INTERNAL REVENUE CODE UPDATE**

**71.98 Internal Revenue Code update.** The following federal laws, to the extent that they apply to the Internal Revenue Code, apply to this chapter:

(1) **HEALTH SAVINGS ACCOUNTS.** For taxable years beginning after December 31, 2003, section 1201 of P.L. 108-173, relating to health savings accounts.

**(END)**